



The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

WESTERN INDIA CHARTERED ACCOUNTANTS NEWSLETTER

SEPTEMBER 2016 | Vol. 42 | No. 09

Log on to <https://wirc-icai.org>
for more information & updates

Together
We Can...



Support



*Supporting dreams
and goals jointly, so that
we grow together collectively*

**OPPORTUNITIES FOR
NON - TRADITIONAL
PRACTICE AREAS for CAs**
6th & 7th October, 2016

**INFORMATION
TECHNOLOGY
SUMMIT 2016**
8th & 9th October, 2016

**SHAKTI - THE POWER
of CA WOMEN**
15th October, 2016

... Change the
World



WIRC CELEBRATES 70th INDEPENDENCE DAY at ICAI TOWER, BKC

**WIRC
OFFICE
BEARERS &
COUNCIL
MEMBERS
BRANCH
VISIT**





Dear Colleagues,

WIRC of ICAI is a vast organisation whose mission is to make its members the world's most respected finance professionals. We do this by providing constant, focused and intensive support to members and students at all levels. The Institute's and WIRC's tangible support is visible in the seminars, conferences, and refresher courses organised regularly, which keep members and students updated with the latest developments in the profession.

We also go one step further by ensuring robust infrastructure in the form of maintaining, upgrading and creating new Branches, Study Circles and Reading Rooms for members and students. It is this unceasing and genuine support from the Institute and WIRC which has made Chartered Accountancy the leading profession in the country.

Independence Day Flag Hoisting: 15th August is celebrated patriotically by WIRC with the hoisting of the Indian Tricolour at our ICAI Tower. This year, the flag was hoisted by CA. Dr. Kirit Somaiya, Member of Parliament.

Building Ties with Regulators: WIRC of ICAI organised an interactive meeting with officials of the TDS department recently, at ICAI Tower, BKC. The officers present on the occasion were Mr. Satish Sharma, CIT (TDS)-1, Mr. Satpal Gulati, CIT CPC (TDS) Ghaziabad and Mr. Devi Singh, CIT (TDS). Members got the opportunity to raise their issues and get guidance directly from the regulators.

All Regions Joint Conference: This is another excellent example of 'Together We Can', wherein all five Regions of ICAI came together. Chief Guest on the occasion, CA. Suresh Prabhu, Union Minister for Railways, gave insights into the changing expectations of regulators from Chartered Accountants. My special thanks to Chairman of Goa Branch and his entire team for making this Conference memorable.

Refresher Courses: WIRC's frequent refresher courses ensure that our members are at the forefront of the profession. Reflecting this ethos, the 'International Tax Refresher Course', the 'MVAT Refresher Course' and the 'Internal Audit Refresher Course' were organised. Members appreciated the efforts as well as the quality of these programmes which ensure they are able to provide the best service as finance professionals.

Student's Convocation: More than 2,000 students were presented their certificates at the worthy hands of our own ICAI Vice-President CA. Nilesh Vikamsey. I take this opportunity to welcome all these new members to the CA profession where I am sure they will excel in their career.

Students Activities: WIRC organised a 'Quiz Contest' and 'Elocution Contest' for our students. My congratulations to all the winners. Students from Branches across the Regions participated in these events.

Articleship Placement Programme and Industrial Training Placement Programme also saw an excellent response and was well appreciated by the students as well as the firms and companies.

Branch Visits: WIRC office bearers visited the Branches of Bhuj, Gandhidham, Rajkot, Bhavnagar and Jamnagar last month. The interactions with members of these Branches gave us a good insight into the local practice dynamics, industry opportunities and issues. We understand the issues faced by our branch members, hence, we all pledge our complete support to all Branches and will continue to back them in all their endeavours.

All these programmes just go to highlight the fact that the foundations of our profession are built on support and the firm belief that everyone grows faster and better....together



CA. SHRUTI SHAH

OFFICE BEARERS

CA. Shruti Shah, *Chairperson*
CA. Hardik Shah, *Vice Chairman*
CA. Kamlesh Saboo, *Secretary*
CA. Shilpa Shinagare, *Treasurer*

EDITORIAL BOARD

CA. Shruti Shah, *Editor*

MEMBERS

CA. Vishnu Agarwal
CA. Sarvesh Joshi
CA. Sandeep Jain
CA. Lalit Bajaj
CA. N. C. Hegde, *Ex-Officio*

Forthcoming Events **Pg 4**

Law Updates **Pg 8**

Recent Judgments **Pg 12**

Together
We Can...

Mark your Calendar for

31st REGIONAL CONFERENCE OF WIRC

12

CPE Hrs

Dates: 10th & 11th December, 2016

Time: 9.00 a.m. to 6.00 p.m.

Venue: Hotel Lalit, Mumbai

INFORMATION TECHNOLOGY SUMMIT 2016

ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai
8th & 9th October, 2016 – Saturday & Sunday | 10.00 a.m. to 6.00 p.m.

Topics	Chief Co-ordinators / Mobile Nos.
<p>8th October, 2016</p> <p>Diversity in IT: Challenges and Opportunities – Mobile computing • Impact of Gender Diversity on Technology Business Performance</p> <p>Role of Big Data in accounting environment – Impact of big data and data analytics in businesses development • The role of accountancy and finance professionals to bridge the gap between the IT department and the stakeholders</p> <p>Panel Discussion – "Digital Employee – advantages & disadvantages"</p>	<p>CA. Aniket Talati 9825551448</p> <p>CA. Sarvesh Joshi 9822022292</p> <p>CA. Purushottam Khandelwal 9825020844</p>
<p>9th October, 2016</p> <p>Data Security: Better Security Through Better IT – Data Security in cloud computing • Data Theft Prevention</p> <p>Analysis of Future Trends: IT plays a synergic role in creating an excellent Client relationship management – The Internet of Things • Business Transformation • Visualisation Management</p> <p>Panel Discussion – "Challenges in Digital Business"</p>	<p>Co-ordinators / Mobile Nos.</p> <p>CA. Murtuza Ghadiali 9967128452</p> <p>CA. Ajay Dave 9869252060</p>

12

CPE Hrs

FEES

₹ 2,400/-



SHAKTI – The Power of CA Women

ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai
15th October, 2016 – Saturday | 10.00 a.m. to 6.00 p.m.

12

CPE Hrs

FEES

₹ 2,400/-

Topics	Speakers
<ul style="list-style-type: none"> Inauguration Reaching at Top – Sharing the success story Technical Session – Ethics in Profession Special Session – Women Health, Yoga & Stress Management Technical Session – GST – the Game changer Special Session – Panel Discussion – Smart Scaling Up, Women as entrepreneur, Women as IAS Officer, Women in Accountancy Profession Technical Session – Technology – Taste of Technology Power of Business Intelligence Importance of Data Analytics Special Session – Self Grooming Cultural Programme 	<p>CA. Jay Chhaira, <i>Chairman, WMEC-ICAI</i></p> <p>CA. Kemisha Soni, <i>Vice Chairperson, WMEC-ICAI</i></p> <p>CA. Zerine Daruwala, <i>CEO – Standard Chartered Bank</i></p> <p>CA. Kemisha Soni, <i>Vice Chairperson, WMEC-ICAI</i></p> <p>Eminent Faculty</p> <p>CA. Bhavna Doshi</p> <p>Eminent Faculty</p> <p>Eminent Faculty</p> <p>CA. Payal Agrawal</p> <p>CA. Sangeeta Dedhia</p>

12

CPE Hrs

FEES

₹ 2,400/-

Chief Co-ordinators / Mobile Nos.	Co-ordinators / Mobile Nos.
<p>CA. Priti Savla 9321426883</p> <p>CA. Shilpa Shinagare Treasurer, WIRC 9820053395</p> <p>CA. Drushti Desai 9820335923</p>	<p>CA. Meenakshi Gupta 9820654322</p> <p>CA. Pinky Kedia 9869030652</p> <p>CA. Rinkle Gorwara 9821688806</p> <p>CA. Shweta Jain 9920737198</p>



J. S. Lodha Auditorium, ICAI Bhawan, Cuffe Parade, Mumbai

Date, Day & CPE Hrs	Time & Fees	Topic(s)	Speaker(s)	Chief Co-ordinators / Mobile Nos.	Co-ordinators / Mobile Nos.
08/10/2016 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	Seminar on IFC • Objectives and importance of the controls • Group Exercise: Building Internal Controls in Financial Reporting • Internal Control Framework – COSO 2013 Framework • Companies Act: Internal Control Testing • Case Studies • Testing of controls – Methodology and Approach • Open Forum / Q & A	Shri Manoj Jain & CA. Kaushal Mehta	CA. Sandeep Jain 9819788099 CA. Priyam Shah 9824096112 CA. Sushrut Chitale 9821112904	CA. Sachin Holmukhe 9820561266 CA. Dilkhush Shah 9769643909 CA. Vikram Joshi 9821733286
22/10/2016 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	Seminar on Assessment under I.Tax • Scheme of Assessment under I.Tax (Self Assessment, Regular Assessment, Best Judgment) Notices, Section 292 BB etc. • Appeal before CITA • Dispute Resolution Scheme • Rectification of Mistakes & Power Relating to amendments in order	CA. Mahendra Sanghavi CA. Sanjeev Lalan CA. Vimal Punamiya	CA. Rakesh Alshi 9819427242 CA. Umesh Sharma 9822079900 CA. Balkishan Agarwal 9377110634	CA. Shantesh Warty 9819947969 CA. Viral Chheda 9833594045 CA. Swati Bhatkar 9967537989
05/11/2016 Saturday 3 CPE Hrs	10.00 a.m. to 1.00 p.m. ₹ 600/-	Workshop on Company Law Compliance / ROC • Company Law Compliance / ROC	CA. Avinash Rawani	CA. Manish Gadia 9820537986 CA. Purushottam Khandelwal 9825020844 CA. Balkishan Agarwal 9377110634	CA. Y. R. Desai 9820448365 CA. Manisha Bhonsale 8097443088 CA. Vidhyut Jain 9892414386

ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai (Classroom)

Date, Day & CPE Hrs	Time & Fees	Topic(s)	Speaker(s)	Chief Co-ordinators / Mobile Nos.	Co-ordinators / Mobile Nos.
10/09/2016 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	Workshop on Media & Entertainment Industry • Overview, Growth of Media and Entertainment Industry and Opportunities for Professionals • Financial Reporting and Controls in Media and Entertainment Industry • Revenue Stream and Audit in Media and Entertainment Industry • Legal Aspect, IPR and Compliance in Media and Entertainment Industry	CA. Anil Singhvi CNBC AWAAZ CA. Lalit Chatnani CA. Manish Tibrewal Adv. Vimochan Naik	CA. Vishnu Agarwal 9324544607 CA. Kamlesh Saboo Secretary, WIRC 9819195333 CA. Manish Gadia 9820537986	CA. Rakesh Tulsyan 9869765155 CA. Ashish Bakliwal 9821968858 CA. Ashwin Raje 9769908479
17/09/2016 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	Workshop on Startup Companies • Startup Simplified – Journey from Idea to Realisation – Detailed discussion on a) Essential seeds for an Idea to become reality; b) How to make business plan and platform to present to Angel Investor/ PE c) Various Govt. Initiatives under Startup India and Standup India campaign • Use of social media in business activity	CA. Manish Hingar Shri Prakash Mundada	CA. Sushrut Chitale 9821112904 CA. Umesh Sharma 9822079900 CA. Satyanarayan Mundada 9422080814	CA. Susanna Cherian 7045144985 CA. Ami Dabhaliya 9819004021 CA. Dhruv Gaglani 9619796967
22/10/2016 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	Seminar on Fraud Investigation & Reporting • Cyber crime & digital evidence • Evidence & Law in forensic • Fraud Investigation – Corporate & Financial • Reporting • Data Analytics in Forensic Audit	Adv. Prashant Mali CA. Mansi Mehta	CA. Kamlesh Saboo Secretary, WIRC CA. Aniket Talati 9825551448 CA. Lalit Bajaj 9867692321	CA. Bipeen Mundada 9223290561 CA. Arun Prithwani 9820917280 CA. Mayur Momaya 9867952010

ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai

Date, Day & CPE Hrs	Time & Fees	Topic(s)	Speaker(s)	Chief Co-ordinators / Mobile Nos.	Co-ordinators / Mobile Nos.
17/09/2016 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	Seminar on Elections in Co-operatives • Overview of SCEA – Its Role & Function • Election to Committee Rule 2014 & Various Circulars • Practical Aspects to Co-operative Election, Co-operative Society Election • Role & Opportunities for CAs • Q & A	Shri Madhukar Choudhari Shri Anand Jogdand Adv. S. B. Patil CA. Ramesh Prabhu Eminent Faculty	CA. Shilpa Shinagare Treasurer, WIRC CA. Kamlesh Saboo Secretary, WIRC CA. Vishnu Agarwal 9324544607	CA. Y. R. Desai 9820448365 CA. Kamal Naulakha 9869431440 CA. Sonia Dawar 9920283330
17/09/2016 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	Seminar on Mutual Funds, PMS & Capital Mkts • The Indian Scenario – Portfolio Management and MF – Overview, Present and Future • The Indian Mutual Fund Industry – Overview of Equity Products, Investment Mechanism/Process, MF vs. Direct Equity • The Indian Mutual Fund Industry – Overview of Debt Products, Investment Mechanism/Process, Challenges • Recent Regulatory Changes & Intricacies Involved in MF and PMS Regulations • Internal audit of MF and PMS • Accounting and Statutory Audit Issues and Challenges relevant to Mutual Funds and PMS • Role of AMFI – Present SEBI Regulations, Distributors, and Future SRO	CA. Sanjay Soni Eminent Faculty Eminent Faculty CA. Viraj Londhe CA. Vidya Barje CA. Milind Ranade Shri Balakrishna Kini	CA. Drushti Desai 9820335923 CA. Pradeep Agrawal 9898560967 CA. Vikrant Kulkarni 9881880073	CA. Mukund Mall 9322224142 CA. Nikita Mall 9969873294 CA. Mamta Parsekar 9820613536
01/10/2016 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	Seminar on Companies Act, 2013 • Incorporation of Companies; Exemptions to Private Limited Cos. • Recent Amendments in Companies Act, 2013 • Loans, Borrowings, Investments and Deposits • Private Placement, Preferential Allotment, Registration of Charges, Powers of Directors, Related Party Transactions	CS. Anant Amdekar* CA. Shrinivas Joshi CS. Makarand Joshi CA. Manish Sampat	CA. Purushottam Khandelwal 9825020844 CA. Sandeep Jain 9819788099 CA. Abhijit Kelkar 9422126890	CA. Falguni Padia 8237442806 CA. Aditi Chaturvedi 9768350383 CA. Bipeen Mundade 9223290561
06/10/2016 07/10/2016 Thursday & Friday 12 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,500/- (per day) ₹ 2,500/- (full course)	Seminar on Opportunities for Non-Traditional Practice Areas for CAs 6th October, 2016 • Exploring & Expanding Assurance Services • Mystery Audit / Shopping (Cineplex/ Retail Stores/ATM / Kiosk etc.) • Warehouse / Depot Audit • Evolving Checklists for IA with Case Studies 7th October, 2016 • Fixed Assets (FA) (Physical verification of FA & FAR) • IA & BPO Environment • Enhancing Efficiency in SCM of Agri-Products • IA of E-Commerce Entities	CA. P. C. Balasubramaniam Eminent Faculty Eminent Faculty CA. Chirag Bakshi Eminent Faculty Eminent Faculty Eminent Faculty Eminent Faculty	CA. Pradeep Agrawal 9898560967 CA. Hardik Shah 9825510422 CA. Lalit Bajaj 9867692321	CA. Shweta Jain 9920737198 CA. Abhijit Totade 9819659151 CA. Meera Joiser 9819354164 CA. Ritesh Hibare 9773418343
22/10/2016 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	Seminar on Co-operative Business Enterprise...a New Dimension to Co-op. Practice • Business that can be set up under Co-operative business as start-up venture. • Documentations like project report, drafting bye-laws and different regulations applicable. • Registration process..A step by step practical approach. • Fund raising and support system in collective business venture	Eminent Faculties	CA. Shilpa Shinagare Treasurer, WIRC 9820053395 CA. Vikrant Kulkarni 9881880073 CA. Satyanarayan Mundada 9422080814	CA. Milind Joshi 9930033939 CA. Nehal Turakhia 9833991898 CA. Hiral Mehta 9892592283

ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai

Date, Day & CPE Hrs	Time & Fees	Topic(s)	Speaker(s)	Chief Co-ordinators / Mobile Nos.	Co-ordinators / Mobile Nos.
05/11/2016 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,200/-	Seminar on Real Estate (Regulation and Development) Act 2016 – Law and practice Overview of Act <ul style="list-style-type: none"> • Registration of Projects – Requirements and procedure • Obligations of Promoters • Obligations of allottees • Dispute resolutions through Regulatory Authority and Appellate Tribunal • Role and Professional opportunities for CAs...certification, filing returns, representation before authority and audit 	Eminent Faculties	CA. Shilpa Shinagare Treasurer, WIRC 9820053395 CA. Hardik Shah 9825510422 CA. Abhijit Kelkar 9422126890	CA. Aniket Kulkarni 9821690559 CA. Prajakta Patil 9819041003 CA. Kalpesh Kothari 9029371777

INFORMATION TECHNOLOGY UPDATE CORNER

The IT Update Corner is intended to keep members abreast with news and views on the topic with short-url link to read the update in detail on the source webpage.

#CyberSecurity Cyberspace is what makes governments vulnerable to hackers. In February 2016, SecurityScorecard analysed and graded the current security postures of 600 local, state, and federal government organisations, each with more than 1,000 public-facing IP addresses, and said they struggled in particular with malware infections, network security and software patching. "Federal agencies may be susceptible to more risk due to the sheer size of their infrastructure, but in many cases, may be prepared to fare better against cyber-security threats due to larger budgets and teams of security personnel," SecurityScorecard analysts wrote. Read more: <https://goo.gl/7BEJRj> Download 2016 Government Cybersecurity Research Report: <http://goo.gl/fRl5Px>

#Internet #InternetGovernance Internet governance is one of the most pressing global public policy issues of our time. Some estimates put the economic contribution of the Internet as high as \$ 4.2 trillion in 2016. The Internet of Things (IoT) could result in upwards of \$ 11.1 trillion in economic growth and efficiency gains by 2025. The 'Global Commission on Internet Governance' presents this report with the aim of providing high-level, strategic advice and recommendations to policy makers, private industry, the technical community and other stakeholders interested in maintaining a healthy Internet. Just as every stakeholder has a legitimate role to play in Internet governance, so too do they have a responsibility to act in a way that promotes the freedom, openness and security of the Internet. Failure to maintain a healthy Internet will undermine opportunities for economic growth, free expression, political equality and social justice. The report provides concrete recommendations and points to actions that should be undertaken by various actors to help secure our collective digital future. Download Report: <http://goo.gl/YVwTCp>

#BusinessIntelligence #PowerBI Microsoft Power BI transforms organisation's data into rich visuals for you to collect and organise so you can focus on what matters to you. Power BI is a suite of business analytics tools to analyse data and share insights. Monitor your business and get answers quickly with rich dashboards available on every device. If you are a data analyst delivering reporting and analytics to your organization, Power BI lets you be productive and creative with what you build. Its integration with Microsoft Excel along with many other sources of data from web to database softwares and ERPs is added advantage. Know more: <http://goo.gl/fb9RvD> Power BI tutorial videos on YouTube: <http://goo.gl/oM62Pp>

#MSME #VirtualClusters MSME 'Virtual Clusters' is an initiative of Ministry of Micro, Small and Medium Enterprises: Micro, Small and Medium Enterprises are the backbone of an economy. They are the most prolific job creators and pioneers in developing new ideas. That is why the MSME Ministry of Government of India wants to help these businesses in every possible way to facilitate the industry. A new step in this direction is the development of "Virtual Clusters." It is a single window access for: Micro, Small and Medium scale businesses; Academic institutions – engineering colleges, polytechnics, ITIs, MBA colleges and Design Institutes; Consultants having expertise in specific industries; Financial institutions; Various Government departments; Advisors, volunteers and non-governmental organisations. Objective is to connect all stakeholders at one common platform for their mutual benefits. Consultants and industry experts can find prospective clients who may get benefited from their expertise. Read more and Join 'MSME Virtual Clusters': <http://msmevirtualclusters.in/home.aspx>

(Disclaimer: Copyright - source links. These links are being provided as a convenience and for informational purposes only; they do not constitute an endorsement or an approval by the WIRC of ICAI of any of the products, services or opinions of the corporation or organisation or individual. The WIRC of ICAI bears no responsibility for the accuracy, legality or content of the external site or for that of subsequent links.)

CA. Ajay Dave

DIRECT TAX

(Contributed by CA. Haresh P. Kenia & CA. Deepak Lala)

SECTION 44AB, READ WITH SECTION 44AD, OF THE INCOME-TAX ACT, 1961 – AUDIT COMPULSORY – CLARIFICATION ON THRESHOLD LIMIT OF TAX AUDIT UNDER SECTION 44AB AND SECTION 44AD – PRESS RELEASE, DATED 20/6/2016

Section 44AB makes it obligatory for every person carrying on business to get his accounts of any previous year audited if his total sales, turnover or gross receipts exceed one crore rupees. However, if an eligible person opts for presumptive taxation scheme as per section 44AD(1) of the Act, he shall not be required to get his accounts audited if the total turnover or gross receipts of the relevant previous year does not exceed two crore rupees. The higher threshold for non-audit of accounts has been given only to assessee's opting for presumptive taxation scheme under section 44AD.

INCOME-TAX (SEVENTEENTH AMENDMENT) RULES, 2016 – INSERTION OF RULE 37BC AND AMENDMENT IN FORM NO. 27Q NOTIFICATION NO. SO 2196(E) [NO. 53/2016 (F.NO. 370142/16/2016-TPL)], DATED 24/6/2016

Rule 37BC has been inserted for relaxation from deduction of tax at higher rate under section 206AA. This rule provides that in the case of a non-resident, not being a company, or a foreign company (hereafter referred to as 'the deductee') and not having permanent account number the provisions of section 206AA shall not apply in respect of payments in the nature of interest, royalty, fees for technical services and payments on transfer of any capital asset, if the deductee furnishes the following details:-

- (i) Name, e-mail ID, contact number;
- (ii) Address in the country or specified territory outside India of which the deductee is a resident;
- (iii) A certificate of his being resident in any country or specified territory outside India from the Government of that country or specified territory if the law of that country or specified territory provides for issuance of such certificate;
- (iv) Tax Identification Number of the deductee in the country or specified territory of his residence and in case no such number is available, then a unique number on the basis of which the deductee is identified by the Government of that country or the specified territory of which he claims to be a resident.

Consequential amendments have been made in Form No. 27Q.

SECTION 44AB, READ WITH SECTION 145, OF THE INCOME-TAX ACT, 1961 – AUDIT COMPULSORY – APPLICABILITY OF INCOME COMPUTATION AND DISCLOSURE STANDARDS (ICDS) NOTIFIED UNDER SECTION 145(2) – PRESS RELEASE, DATED 6/7/2016

Considering the present facts, it has been decided that the ICDS shall be applicable from 1/4/2016 i.e. previous year 2016-17 (Assessment Year 2017-18).

FAQ ON INCOME DECLARATION SCHEME

Circular No. 24 dated 27/6/2016; Circular No. 25 dated 30/6/2016; Circular No. 27 dated 14/7/2016 have been issued to clarify on various issues of Income Declaration Scheme.

INCOME DECLARATION SCHEME, 2016 – RELAXATION OF TIME SCHEDULE FOR MAKING PAYMENTS UNDER SAID SCHEME – PRESS RELEASE, DATED 14/7/2016

Taking into consideration the practical difficulties of the stakeholders, the Government has decided to revise the time schedule for making payments under the Scheme as under:

- (i) A minimum amount of 25% of the tax, surcharge and penalty to be paid by 30/11/2016;
- (ii) A further amount of 25% of the tax, surcharge and penalty to be paid by 31/3/2017;
- (iii) The balance amount to be paid on or before 30/9/2017.

SECTION 119 OF THE INCOME-TAX ACT, 1961 – INCOME-TAX AUTHORITIES – INSTRUCTIONS TO SUBORDINATE AUTHORITIES – CLARIFICATIONS REGARDING ATTAINING PRESCRIBED AGE OF 60/80 YEARS ON 31st MARCH ITSELF, IN CASE OF SENIOR/VERY SENIOR CITIZENS WHOSE DATE OF BIRTH FALLS ON 1st APRIL, FOR PURPOSES OF INCOME-TAX ACT – CIRCULAR NO. 28/2016 [F.NO. 225/182/2016/ITA.II], DATED 27/7/2016

The Central Board of Direct Taxes, in exercise of powers under section 119 of the Act, hereby clarifies that a person born on 1st April would be considered to have attained a particular age on 31st March, the day preceding the anniversary of his birthday. In particular, the question of attainment of age of eligibility for being considered a senior/very senior citizen would therefore be decided on the basis of above criteria. The field authorities are directed to take note of above position for ascertaining the age while computing tax liability of a taxpayer falling in Individual category, being resident in India.

SECTION 119 OF THE INCOME-TAX ACT, 1961 – INCOME-TAX AUTHORITIES – INSTRUCTIONS TO SUBORDINATE AUTHORITIES – EXTENSION OF DUE DATE FOR FILING RETURNS OF INCOME FROM 31/7/2016 TO 5/8/2016 IN CASE OF TAXPAYERS THROUGHOUT INDIA – ORDER [F.NO. 225/195/2016/ITA.II], DATED 29/7/2016

On consideration of reports of Bank strike on 29th July, 2016 (Friday) and the 31st July, 2016 (Sunday), being a Bank-Holiday, in order to avoid any inconvenience to the taxpayers while making payment of taxes pertaining to returns of income for Assessment Year 2016-17, which are required to be filed by 31st July, 2016 as per provisions of section 139(1) of Income-tax Act, 1961, the Central Board of Direct Taxes, in exercise of powers conferred under section 119 of the Income-tax Act, 1961, hereby extends the 'due-date' for filing such returns of income from 31st July, 2016 to 5th August, 2016, in case of taxpayers throughout India who are liable to file their Income-tax return by the said 'due-date'.

MAHARASHTRA VAT (Contributed by CA. C. B. Thakar)

Notifications

- (i) The Government of Maharashtra has issued notification dated 31/5/2016 under section 9(1) of the MVAT Act, 2002 to increase rate of tax on petrol w.e.f. 1/6/2016.
- (ii) The Government of Maharashtra has issued notification dated 9/6/2016 by which the date of effect to proviso to section 16(3) of MVAT Act is notified.

- (iii) The Government of Maharashtra has issued notification dated 11/7/2016 by which the appointment of members for Advance Ruling Authority is notified.
- (iv) The Government of Maharashtra has issued notification under section 83(4) of MVAT Act dated 6/8/2016 whereby Rules 52A & Rule 83A are amended. The amendments are relating to conditions of set off in relation to goods manufactured by mega units.
- (v) The Government of Maharashtra has issued one more notification under section 83(4) of MVAT Act dated 6/8/2016, whereby Rules 17A, 21 & Rule 23 are amended. The amendments are relating to empowering the government machinery to make correspondence through electronic media.

Circulars

The Commissioner of Sales Tax has issued Circular bearing No. 20 T of 2016 dated 19/7/2016 wherein updated FAQs on Settlement of Arrears in Disputes Act, 2016 are given.

GUJARAT VAT

(Contributed by CA. Kishor R. Gheewala)

VAT / SALES TAX SAMADHAN SCHEME 2016

As per announcement made in February, 2016, while presenting the State Budget, GR No. GST/102014/2241/th-dated 1/8/2016 has been passed, declaring the rules and regulations of VAT / Sales Tax Samadhan Scheme 2016. The salient features of the same are as under,

- The Scheme is applicable to dues as per assessment order, outstanding as on 31/12/2015.
- The period of the scheme is up to 31/12/2016.
- The benefit of the scheme is not available for dues exceeding ₹ 10 crores for all categories in all years.
- In case of tax evasion, the dealer shall have to pay Tax + Interest + 25% as Penalty. Balance amount of penalty shall be remitted..
- In other cases, the dealer shall have to pay full amount of tax only. Interest and penalty shall be remitted.
- The scheme is also applicable to dealers, desiring to declare tax evasion *sue moto*. They will have to pay Tax + Interest + 25% as Penalty.
- The dealer has an option to pay by 31/12/2016, 30% of amount payable and balance amount in six equal monthly installments with applicable Interest.
- The dealer shall have to file an application under the scheme, along with an undertaking to withdraw the appeal, if any, on receipt of approval granted by the Commissioner to his application.

CORPORATE LAWS

(Contributed by CA. Rahul Joglekar)

MCA (www.mca.gov.in)

MCA Notification No. G.S.R 742 (E) dated 27th July 2016 - Companies (Accounts) Amendment Rules, 2016

MCA has amended the Companies (Accounts) Rules 2014 with the aforesaid notification. Various amendments have been

incorporated in the principal rules. However, the most important amendment is in regard to consolidation of accounts. MCA has advised that preparation of consolidated financial statements by a company is not necessary if it is a wholly-owned subsidiary, or is a partially-owned subsidiary of another company and all its other members, including those not otherwise entitled to vote, having been intimated in writing and for which the proof of delivery of such intimation is available with the company, do not object to the company not presenting consolidated financial statement or it is a company whose securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India and its ultimate or any intermediate holding company files consolidated financial statements with the Registrar which are in compliance with the applicable Accounting Standards. For complete text of the notification, please refer the link: http://www.mca.gov.in/Ministry/pdf/CompaniesAccountsAmendmentRules_28072016.pdf.

SEBI (www.sebi.gov.in)

SEBI Circular No. SEBI/ LAD-NRO/GN/2016-17/008 dated 8th July 2016 – SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2016

SEBI has amended the listing regulations to prescribe additional disclosures in the financial statements of listed companies. It prescribes that top five hundred listed entities based on market capitalisation (calculated as on March 31 of every financial year) shall formulate a dividend distribution policy which shall be disclosed in their annual reports and on their websites. Various parameters of dividend distribution policy have also been stipulated. Further, listed entities other than top five hundred listed entities based on market capitalisation may disclose their dividend distribution policies on a voluntary basis in their annual reports and on their websites. For complete text of the circular, please refer the link: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1468383846971.pdf.

SERVICE TAX

(Contributed by CA. Rajiv Luthia)

SYNOPSIS OF NOTIFICATIONS, CIRCULARS & LETTERS

CBEC, *vide* Circular No. 196/06/2016-ST dated 27th July, 2016, has reiterated that Central Excise Officers have to strictly comply to the instructions issued *vide* Circular No. 103/06/2008-ST dated 1st July, 2008 related to provisional attachment of property u/s. 73C of Finance Act, 1994 & to ensure that the said powers should be exercised with utmost care and caution and should not be exercised frivolously.

CBEC, *vide* Circular No. 197/7/2016-ST dated 12th August, 2016, has issued following clarifications on levy of Service Tax on the activity of freight forwarders on transportation of goods from India:

- In case where freight forwarder merely acts as a booking agent with no responsibility for the actual transportation, the freight forwarder bears no liability with respect to transportation and any legal proceedings will have to be instituted by the exporters against the airline/carrier/ocean-liner.

The freight forwarder merely charges the rate prescribed by the airline/carrier/ocean liner and cannot vary it unless authorised by them.

In such cases, the freight forwarder may be considered to be an intermediary under Rule 2(f) read with Rule 9 of Place of Provision of Service Rules, 2012 ("PPSR") since he is merely facilitating the provision of the service of transportation but not providing it on his own account.

The service of transportation is provided by the airline/ carrier/ocean-liner and the freight forwarder is merely an agent and the service of the freight forwarder will be subjected to tax while the service of actual transportation will not be liable for service tax under Rule 10 of PPSR.

- In case where the freight forwarder acts as a principal, he would negotiate the terms of freight with the airline/ carrier/ocean-liner as well as the actual rate with the exporter. The invoice is raised by the freight forwarder on the exporter.

In such cases where the freight forwarder is undertaking all the legal responsibility for the transportation of the goods and undertakes all the attendant risks, he is providing the service of transportation of goods. In such cases, he is not covered under the category of intermediary, which by definition excludes a person who provides a service on his account.

In such cases, freight forwarder acting as a principal will not be liable to pay service tax when the destination of the goods is from a place in India to a place outside India in view of Rule 10 of PPSR.

CBEC, vide Circular No. 198/08/2016-ST dated 17th August, 2016, has issued following clarifications on levy of Service Tax on the activity of hiring of goods without the transfer of the right to use goods:

- In any given case involving hiring, leasing or licensing of goods, following criteria laid down by Larger Bench of Hon'ble Supreme Court in the case of *BSNL v/s. UOI (2006) TIOI 15* must be followed to determine whether, in terms of the contract, there is a transfer of the right to use the goods.
 - a) There must be goods available for delivery;
 - b) There must be a consensus *ad idem* as to the identity of the goods;
 - c) The transferee should have a legal right to use the goods - consequently all legal consequences of such use, including any permissions or licenses required therefor should be available to the transferee;
 - d) For the period during which the transferee has such legal right, it has to be to the exclusion to the transferor this is the necessary concomitant of the plain language of the statute - viz. a "transfer of the right" to use and not merely a licence to use the goods;
 - e) Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same right to others.
- The terms of the contract must be studied carefully vis-a-vis the abovesaid criteria laid down by the Hon'ble Supreme Court as well as other judicial pronouncements in order to determine whether service tax liability will arise in a given case.

FEMA

(Contributed by CA. Manoj Shah, CA. Sudha G. Bhushan & CA. Mitesh Majithia)

Increase in limit for Foreign Investment in Stock Exchanges

Press Release dated July 27, 2016 issued by the Ministry of Finance

To implement the Budget announcement made by the Hon'ble Finance Minister Shri Arun Jaitley while presenting the Union Budget 2016-17 regarding reforms in Foreign Direct Investment (FDI) Policy with respect to enhancement of investment limit of foreign entities in Indian Stock Exchanges from 5% to 15% on par with domestic institutions, the Union Cabinet chaired by the Prime Minister Shri Narendra Modi has on July 27, 2016 approved raising of the foreign shareholding limit from 5% to 15% in Indian Stock Exchanges for a stock exchange, a depository, a banking company, an insurance company, a commodity derivative exchange. The cabinet has also approved the proposal to allow foreign portfolio investors to acquire shares through initial allotment in the stock exchanges, besides secondary markets.

Foreign Investment in other Financial Services sector

Press Release dated August 10, 2016 issued by the Ministry of Finance

Presently, Foreign Direct Investment (FDI in Non-Banking Finance Companies (NBFCs) is allowed in 18 specified activities under automatic route.

The Hon'ble Finance Minister in his Budget 2016-17 speech had announced that FDI will be allowed beyond 18 specified activities for NBFCs under automatic route in other activities which are regulated by financial sector regulators. Accordingly, the Union Cabinet chaired by the Prime Minister Shri Narendra Modi has, on August 10, 2016, given its approval to amend the existing Foreign Exchange Management (Transfer of Issue of security by the Person Resident outside India) Regulation for foreign investment in the NBFCs as under:

- The amendment will enable inflow of foreign investment in "Other Financial Services" on automatic route provided that such services are regulated by any financial sector regulators such as RBI, SEBI, PFRDA etc. or by any Government Agencies.
- Foreign Investments in "Other Financial Services" which are not regulated by any regulator or Government Agencies can be made on approval route.
- Minimum capitalisation norms as mandated under FDI Policy have been eliminated as most of the regulators have already fixed minimum capitalisation norms.

CO-OPERATIVE SECTION

(Contributed by CA. Ramesh Prabhu)

I) Notification on Deemed Conveyance:

(A) G.R. No. Misc. 2016/Pra.Kra.1/Du & Pu-2 dated 14th June, 2016

Considering the difficulties faced by the Co-operative Housing Societies to get the deemed conveyance process simplified a committees of different secretaries of Govt of Maharashtra was constituted on 25th February, 2016. On the recommendation of

the said Committee, the above G.R. dated 14th June, 2016 was issued listing the documents required for applying for deemed conveyance before the Competent Authority (District Deputy Registrar) which are as under:

1. Application in Form 7 of the Rules of MOFA Law for Deemed Conveyance.
2. Copy of the Co-operative Housing Society's Registration Certificate/Company Registration Certificate/Deed of Declaration.
3. Extract Copy of Survey, 7/12 of the sanctioned layout or copies of the property card within three months.
4. A Copy of the Sale Agreement of every member or Index 2 or proof of the ownership right of the flat e.g. Succession Certificate, Decree of the Court or Will etc.
5. Legal Notice Served to the Promoter under the Maharashtra Apartments Act 1970 by the Co-operative Housing Society for giving conveyance.
6. List of all legal flat owners in the society.
7. Construction Completion Certificate Certified by the Planning Authority.
8. If there are entries like type of controlled power, new indivisible condition or occupant class 2 on 7/12 extract or on property card then the copy of the permission order for land transfer or for Non-agriculture purposes issued by the Competent Authority (If applicable).

The G.R. also stated that along with the application filed before the DDR, the societies also permitted to file an application before the Collector of Stamps to determine the stamp duty applicable on the deemed conveyance deed. Further it also said, the respective department involved in the deemed conveyance need to issue the G.R. taking into account the recommendation of the committee.

(B) G.R. on Stamp duty and registration on Deemed Conveyance

G.R. No. Dept. Govt. circular No. Stamp duty -2012/1046/ Case No. 294 dated 12th July, 2016.

The above circular listed the documents required to complete the process of Stamp duty and registration of deemed conveyance.

- 1) Draft of agreement for sale (with one Xerox Copy)
- 2) Copy of Agreement for sale of flat of each member or Index II or Proof of ownership of flat e.g Succession certificate, Court order or Will. etc.
- 3) Copy of order issued by Authority for Deemed Conveyance as per MOFA, 1963 under section 11(3) [About regulation of encouragement for construction of flats, their sale, Management & Transfer)
- 4) Copy of Identify card of witnesses
- 5) Copy of Registration Fees & stamp duty handling fees.

Both the above GR are available on the website of the WIRC in Co-operative section.

II) Draft Rules notified by the Central Govt. on Real Estate (Regulation and Development) Act, 2016

- A) 'The Housing and Poverty Alleviation Ministry of Govt of India has notified on 2nd August, 2016 *vide* No.

O-17034/18/2009-H (Vol. X) / FTS No. 16083 Rules titled as "Union/Territories of Chandigarh, Andaman and Nicobar Islands, Daman and Diu, Dadra and Nagar Haveli, Lakshadweep" (Agreement for Sale) Rules, 2016. The same is available on the website of the WIRC in Co-operative section.

- B) 'On 24th June, 2016 *vide* No. O-17034/18/2009-H (Vol. IX) (Part III) / FTS No. 15980, Union Government has published draft "Union Territories of Chandigarh, Andaman and Nicobar Islands, Daman and Diu, Dadra and Nagar Haveli, Lakshadweep" Real Estate (Regulation and Development) Rules, 2016. The final Rules may be notified very shortly.

III) 100% of the Co-operative Audit for the year 2015-16

The Commissioner for Co-operation and Registrar of Co-operative Societies, Maharashtra State has taken a mission to get 100% audit completed. Accordingly, for each societies recorded online of the Government website have been assigned to an auditor to complete the audit. To avoid the issues related to appointment of auditors by DDR under proviso to section 81(1) of the MCS Act, 1960 for the year 2016-17, every panel auditor is advised to generate the e-order within 1 month of appointing the auditors by the auditors through their login.

...

PAYMENT OF ANNUAL MEMBERSHIP FEE FOR THE YEAR 2016-17

The annual membership fee, and in the case of members in practice, the annual Certificate of Practice fee, were due and payable on 1st April, 2016.

The last date for payment is 30/09/2016 to avoid removal of your name from the Register of Members with effect from 1st October, 2016.

The schedule of fee payable is as under:

For Members below age of 60 years		For Members above age of 60 years (As on 1st April, 2016)	
Associate without Certificate of Practice	800/-	Associate without Certificate of Practice	600/-
Associate with Certificate of Practice	2,800/-	Associate with Certificate of Practice	2,100/-
Fellow without Certificate of Practice	2,200/-	Fellow without Certificate of Practice	1,600/-
Fellow with Certificate of Practice	4,200/-	Fellow with Certificate of Practice	3,100/-

The cheque or demand draft should be drawn in favour of "The Secretary, The Institute of Chartered Accountants of India". Members whose Professional address is at Ahmedabad / Pune / Surat / Vadodara / Nagpur / Thane, may remit their fees in the respective Sub DCO offices.

For payment of membership fee online, please visit the Institute's website www.icai.org or the link www.icai.org/memfee.html

(KOSHY JOHN)
JOINT SECRETARY

DIRECT TAX

(Contributed by CA. Paras K. Savla & CA. Hemant Shah)

JUDICIAL PRONOUNCEMENTS

SUPREME COURT

Uttam vs. Saubhag Singh (Supreme Court)

Important law on concept of “ancestral property” under the Hindu Succession Act, 1956 and the formation of a HUF by the surviving members of the deceased explained.

On a conjoint reading of Sections 4, 8 and 19 of the Act, after joint family property has been distributed in accordance with section 8 on principles of intestacy, the joint family property ceases to be joint family property in the hands of the various persons who have succeeded to it as they hold the property as tenants in common and not as joint tenants.

2) Visvesvaraya Technological University vs. ACIT (Supreme Court)

Section 10(23C): Meaning of expression “existing solely for the purpose of education and without any profit motive” explained. Huge surplus (in excess of 6 to 15%) and minimal expenditure implies profit motive. Fees collected from students, though as per statute, are not a funding by the Government.

During a short period of a decade (from the year 1999 to 2010) the University had generated a surplus of about ₹ 500 crores. There is no doubt that the huge surplus has been collected/accumulated by realising fees under different heads in consonance with the powers vested in the University under Section 23 of the VTU Act. The difference between the fees collected and the actual expenditure incurred for the purposes for which fees were collected is significant. In fact the expenditure incurred represents only a minuscule part of the fees collected. No remission, rebate or concession in the amount of fees charged under the different heads for the next Academic Year(s) had been granted to the students. The surplus generated is far in excess of what has been held by this Court to be permissible (6 to 15%).

Sections 15, 17, 192: Concept of “salary” explained (Supreme Court)

As “tips” are paid to employees of the assessee from an outsider on a voluntary basis and the employees have no vested right to receive the same, the same is not “salary” and the assessee has no obligation to deduct TDS

Section 15 to apply, there should be a vested right in an employee to claim any salary from an employer or former employer, whether due or not if paid; or paid or allowed, though not due. In *CIT vs. L. W. Russel* [53 ITR 91 (SC)], this Court dealt with the provisions of Section 7(1) of the 1922 Act, which preceded Sections 15 and 17 of the present Act and held that it is necessary for the employee to have a vested right to receive an amount from his employer before he could be brought to tax under the head “Salaries”; Tips being purely voluntary amounts that may or may not be paid by customers for services rendered to them would not, therefore, fall within Section 15(b) at all. Also, salary must be paid or allowed to an employee in the previous year “by or on behalf of” an employer. Even assuming that the expression “allowed” is an expression of width, the salary must be paid by or on behalf of an employer. It must first be noticed that the expression “employer” is different from the expression “person”. An “employer” is a person who employs another person under a contract of employment, express or

implied, to perform work for the employer. Therefore, Section 15(b) necessarily has reference to the contract of employment between employer and employee, and salary paid or allowed must therefore have reference to such contract of employment.

TRIBUNAL DECISIONS

DCIT vs. Mahender Kumar Bader (ITAT Jaipur)

In view of CBDT Circular No. 6/2016 dated 29/02/2016, if assessee has consistently shown shares as an “investment” and offered gains as capital gains, AO is not entitled to urge that the same constitutes “stock-in-trade” and assess gains as business profits on grounds that there were substantial and frequent transactions and motive was to earn profit and holding period of such shares was very short.

Since the assessee has treated the securities as investment and not as stock-in-trade in all the years, therefore, in view of the CBDT Circular, the revenue is not permitted to take a contrary view in the present year and claimed that the security is stock-in-trade and, therefore, the profit/gain caused to the assessee be treated as business income.

OTHER DEVELOPMENTS & AMENDMENTS

CBDT issues Draft Rules for grant of Foreign Tax Credit

The CBDT has issued a press release dated 18/04/2016 stating that the Income-tax Act, 1961 (the Act) provides that the Central Board of Direct Taxes may prescribe Rules specifying the procedure for grant of relief or deduction of income-tax paid in any country or specified territory outside India, u/s. 90/90A/91 of the Act against the Income-tax payable under the Act. Accordingly, the CBDT has framed the Draft Rules for grant of Foreign Tax Credit. The CBDT has invited comments from stakeholders and general public by 2/5/2016 at the e-mail address dirtpl4@nic.in or by post at Director (TPL-IV), Central Board of Direct Taxes, Room No. 147-F, North Block, New Delhi.

3) CBDT Circular: Payment of Interest on Refund u/s. 244A on excess TDS deposited u/s. 195

The CBDT has issued Circular No. 11/2016 dated 26/04/2016 stating that in accordance with the judgment of the Supreme Court in *UOI vs. Tata Chemical Limited* 363 ITR 658, it is settled that if resident deductor is entitled for the refund of tax deposited u/s. 195 of the Act, then it has to be refunded with interest u/s. 244A of the Act, from the date of payment of such tax. The CBDT has directed that no appeals may henceforth be filed on this ground by the officers of the Department and appeals already filed on this issue may not be pressed.

INTERNATIONAL TAXATION

(Contributed by CA. Hinesh Doshi & CA. Ronak Soni)

CIT vs. Halliburton Export Inc [ITA 363/2016 Delhi High Court] 11th July, 2016

M/s. Halliburton Export Inc-USA is engaged in the business of supplying pre-packaged software and providing maintenance and other Support services. The AO stated that the sale of software from its Indian customer is royalty which is taxable in terms of 9(1) (VI) as well as Article 12 of the India-US DTAA. High Court ruled that licensee has acquired is only a copy of the copyright article whereas the copyright remains with the owner, thus such income shall not be treated as royalty income but shall be treated as business profits and not taxable in the absence of permanent establishment in India.

Excel Chemicals India Limited vs. ITAT [TS-417-ITAT-2016 (Ahd.)] dated 29th July, 2016

The assessee, a resident company paid commission to non-resident entities without deducting TDS. The AO disallowed the same in the hands of the assessee in India considering that orders were executed from India referring to Explanation 4 to Section 9(1)(i). ITAT holds that when no operations of the business of commission agent is carried on in India, the Explanation 1 to Section 9(1)(i) takes the entire commission income from outside the ambit of deeming fiction under Section 9(1)(i), and, in effect, outside the ambit of income 'deemed to accrue or arise in India' for the purpose of Section 5(2)(b). Hence the ruling was in favour of the assessee.

VJM Media (P.) Ltd. vs. DCIT CIRCLE-1 [MUM-ITAT-2016] dated 13th April, 2016

The assessee, engaged in the business of publishing magazines made payment to one in Singapore and another in United Kingdom, for procuring images and figures for limited purpose of its one time use to be published in assessee's magazines in India in respect of which tax was not deducted. The AO made disallowance u/s. 40(a)(i) in the nature of royalty. The Tribunal has observed that what has been permitted to the assessee is to make use of the article and not use of the copyright and therefore, assessee was not liable to deduct tax on the payments made for the same.

ADIT (IT)/DDIT (IT) vs. Taj TV Ltd. [TS-428-ITAT-2016 (Mum.)] dated 8th August, 2016

The assessee, Taj TV Ltd. is a Mauritius-based Company collected revenue by way of advertisement and distribution of channel in India from Taj India exclusive distributor. According to AO, Taj India was a 'dependent agent' of the assessee and thus had a PE in India. ITAT observed that the distribution revenue is of principal to principal basis it moves out from the conditions laid down in Article 5(4).

Also the payments made by the assessee to PanAmSat International Systems Inc. USA for providing transponder facility for telecasting its channel was disallowed by AO holding that the payment was royalty u/s. 9(1)(vi) and also under Article 12(3)(b) of Indo-US-DTAA. ITAT observed that payment could not be treated as consideration for 'use' or 'right to use' any copyright, It is not for a secret process; or 'Fees for Included Services' as it does not make available technical knowledge as per Article 12 of India-US DTAA.

SERVICE TAX

(Contributed by CA. A. R. Krishnan & CA. Girish Raman)

Maintenance & Repair service

Levy service tax on repair & maintenance of software was permissible only w.e.f. 1/6/2007 wherein an amendment was made in the definition of management, maintenance and repair service and not prior to that date. [Oracle Financial Services Software Ltd. vs. CST (2015) 40 STR 316 (Tri.-Mum.)]

Manpower Recruitment or Supply Agency service

Where the appellant an educational institution imparting courses in engineering and technology services had collected charges from its students for facilitating placements of students in various organisations, the Hon'ble Tribunal held that no service tax can be demanded from the appellant under the category of manpower recruitment or supply agency services since in case manpower recruitment or supply agency services, the service recipient of such services, must be an employer or prospective employer and the consideration for service must flow from such employer. In the present case, as the charges were collected from students and not from the employers hence no service tax was payable thereon under the category of manpower recruitment or supply agency services. [Motilal






BHALCHANDRA DATEY, Land Expert
M.E.(Civil-Town Planning), M.A.M.(Bajaj), G.D.Arch., F.D.Arch., D.J.
Architect, Civil Engineer, Town-Planner & Builder

DATEY LANDS = LAND EXPERTS
We Fulfil Your Green Vision, with Appreciation.

**For Purchasing & Agricultural Lands,
WE MAKE YOU FARMER, LEGALLY.**
Home Delivery All Over India for becoming Farmer

We give Legal & Practical Advice on Agricultural Lands & Property Matters.

FOR SALE Or J.V.
450 ACRES OF LAND, ON HILLOCKS, BETWEEN MUMBAI & PUNE
SUITABLE FOR SMART CITY, INTERNATIONAL CENTRE,
RESORT, OR FOR INVESTMENT.

**WE PURCHASE, DEVELOP, SALE AGRICULTURAL LANDS,
PLOTS & SOCIETY FARM-HOUSES IN RAIGAD DISTRICT.**

Datey Lands, Datey Zerox, Datey Bhavan, Akshikar Road,
Opp. Vanmali-Dhuru Hall, Near Railway Station,
Dadar (West), Mumbai - 400028.

Pragati-8433557110, Aditi-9969449896, Dilip-9833703655
1800 22 5822, 022-24388174, 24224046, 24220199, 24305382.
datey13@gmail.com ♦ www.dateylands.com

8 to 8, 12 hrs./365 days, NO HOLIDAY

Datey Jumbo Color Zerox Group
BHAGYASHREE DATEY B.A., LL.B.

Congratulations!



CA. Jayant Gokhale
has been nominated by Finance
Ministry, GoI, as a Part-time
Non Official Director (in the
Chartered Accountant Category)
on the Board of Syndicate Bank.

Personal Column

A leading CA firm in Mumbai requires "Statutory Auditor" with 2 – 6 years of experience in Statutory Audit of a large corporate / listed company. Experience in Bank Audit would be an advantage.
email id: mansi.oasis97@gmail.com, 65265573.

Nehru National Institute of Technology vs. CCE (2015) 40 STR 375 (Tri.-Del.)

Supply of Tangible goods

Where the appellant received certain amounts for hiring out pipes manufactured by them for use by farmers in agricultural operations resulting in transfer of possession and effective control to such farmers and on which amounts it had paid VAT the Hon'ble Tribunal held that demand of service tax on the said amounts under the category of supply of tangible goods is not permissible. [*Sujala Pipes Pvt. Ltd. vs. CCE (2015) STR 606 (Tri.-Bang.)*]

Import of services

The appellant in the present case was a manufacturer and exporter of textile made-ups. It had engaged the services of overseas commission agent for procurement of orders. The Revenue had sought to demand service tax on the commission paid by the appellant on reverse charge basis under the category of 'Business Auxiliary Services'. On appeal, the Tribunal held that no service tax would be payable since the appellant being a manufacturer and exporter of textile made-ups would be considered as a textile industry unit and the commission paid by the appellant to the overseas agent for promoting export of its goods would be considered as an activity incidental or auxiliary to processing of textile goods and hence exempt from payment of service tax under clause (d) of Notification No. 14/2004-ST dated 10/9/2004. Further even if tax was paid under reverse charge it would be entitled to refund under Notification No. 41/2007 – hence the demand would be revenue neutral. Lastly, the demand is also hit by limitation since the appellant entertained a belief that under EXIM policy in respect of all goods and services exported from India the services received/ rendered abroad shall be exempt from service tax. [*Texyard International vs. CCE (2015) 40 STR 322 (Tri.-Chen.)*]

Reverse charge liability

In a case where services were received from Government of Andhra Pradesh, service tax was not paid on the payments made to the Government of Andhra Pradesh under reverse charge mechanism but Government of Andhra Pradesh had paid the tax, the Hon'ble Tribunal held that service tax cannot be recovered again from the appellant but penalty for contravention of provision was applicable. But no penalty was levied since in absence of any provision for imposition of penalty for contravention of specific provision in not making payment under reverse charge mechanism and having regard to the fact that it was only initial period of introduction of new provisions of law, a lenient view was taken under Section 80 of Finance Act [*Kakinada Seaports Ltd. vs. C.C.E., S.T. & Cus. (2015) 40 S.T.R. 509 (Tri.-Bang.)*].

Refund

Denial of refund on the grounds that the FIRC in case of exports are issued in the old name of the appellant is not permissible. [*Concurrent Tech India Pvt. Ltd. vs. CST (2015) 40 STR 342 (Tri.-Bang.)*].

The appellant in the present case had mistakenly paid service tax under the category of manpower recruitment or supply agency services. Subsequently, it had filed a refund claim for the same which was rejected by the adjudicating authority on the grounds that the appellant had wrongly paid the tax under the category of 'Manpower recruitment agency service' instead of paying it under the category of 'Cargo handling service'

but did not give any specific findings that the service tax was payable by the appellant under the category of 'Cargo handling services'. The revenue argued before the Hon'ble Tribunal that the amount paid by the appellant can be adjusted against its liability under cargo handling service. However, the Tribunal held that since the adjudicating authority had clearly held that service tax was not payable under the category of manpower recruitment agency service and in view of the fact that there was not any finding by the authority that service tax was payable under the category of 'cargo handling services', the refund claim of the appellant was admissible [*Sharam Sewa Associates vs. CCE (2015) 40 STR 377 (Tri.-Del.)*].

Where the assessee had filed the refund claim before a wrong jurisdictional authority, it was held that the period of time spent in pursuing the issue before the wrong authority has to be excluded for computation of limitation and the date of filing the refund claim was to be taken as the date on which the refund was filed before the wrong service tax jurisdictional authority [*Sahara Power Products vs. CCE (2015) 40 STR 536 (Tri.-Bang.)*].

The appellant in the present case was engaged in providing management consultancy services such as providing reports on investment area, industries, companies, potential investment opportunities in India, feedback of performance of investment in India etc. to its group companies situated in Australia which company used these information for advising to its customers to make investment in India. The revenue had sought to demand service tax on the grounds that the service were not in the nature of exports. On appeal it was held that, though the service related to analysis was carried out in India, the same was provided to an Australian company and not any person located in India. There was no person in India concerned with the above services. Hence the services were consumed by the Australian company, the sole recipient of service. Accordingly, the Hon'ble Tribunal held the service has to be considered as exports. [*AMP Capital Advisors India Pvt. Ltd. vs. CST (2015) 40 STR 577 (Tri.-Mum.)*].

Where the refund of unutilised CENVAT credit claimed under Notification No. 27/2012 dated 18/6/2012 issued under Rule 5 of CENVAT Credit Rules, 2004 was denied to the appellant, an exporter of service, on the grounds that he was not registered with the service tax department, the Hon'ble Tribunal held that the same was not permissible since –

- The revenue had not disputed the appellant's eligibility to claim credit.
- The said notification has been issued in exercise of powers vested under Rule 5 under which rule there is no specific prohibition provided that refund shall be granted only after registration of service provider.

[*Dorling Kindersley (I) Pvt. Ltd. vs. CCE (2015) 40 STR 598 (Tri.-Del.)*].

In the present case the appellant had earlier discharged its service tax liability in respect of Goods transport agency services by utilizing CENVAT credit. But had subsequently at the insistence of the Department paid the same in cash and *suo motu* taken recredit in respect of the amounts paid earlier through CENVAT credit. The revenue had objected to such *suo motu* taking of credit. However, on appeal the Hon'ble Tribunal held that the act of the appellant was in accordance with law as revenue cannot demand tax twice on the same transaction and hence objecting to such recredit was not warranted. [*J. K. Lakshmi Cement Ltd. vs. CCE (2015) 40 STR 618 (Tri.-Del.)*].





INTERACTIVE MEET WITH TDS OFFICERS

**SEMINAR ON
HUF & FAMILY
ARRANGEMENT**



SEMINAR ON ICDS



STUDY COURSE ON CONVEYANCE / DEEMED CONVEYANCE



ALL REGION JOINT CONFERENCE AT GOA



CONVOCAION 2016-17 AT MUMBAI



Price ₹ 15 per copy

Associate Membership Fees ₹ 800 and Fellow Membership Fees ₹ 2,200 (including subscription to WICA Newsletter)

Printed and published by Shri Koshy John, Joint Secretary on behalf of Western India Regional Council of The Institute of Chartered Accountants of India and printed at Finesse Graphics & Prints (Pvt) Ltd., 309, Parvati Industrial Estate, Sunmill Compound, Lower Parel, Mumbai – 400 013 and published at Western India Regional Council of the Institute of Chartered Accountants of India, ICAI Tower, Plot No. C-40, G Block, Opp. MCA Academy, Next to Standard Chartered Bank, Bandra Kurla Complex, Bandra East, Mumbai - 400051.

Editor: CA. Shruti Shah

The views and opinions expressed or implied in Western Indian Chartered Accountants Newsletter are those of the authors or contributors and do not necessarily reflect those of WIRC. Unsolicited articles and transparencies are sent in at the owner's risk and the publisher accepts no liability for loss or damage. Material in this publication may not be reproduced, whether in part or in whole, without the consent of WIRC.

DISCLAIMER: The WIRC of ICAI is not in any way responsible for the result of any action taken on the basis of the advertisement published in the Newsletter. The members, however, may bear in mind the provision of the Code of Ethics while responding to the advertisements.

Branches : Ahmedabad • Ahmednagar • Akola • Amravati • Anand • Aurangabad • Baroda • Bharuch • Bhavnagar • Bhuj • Dhule • Gandhidham • Goa • Jalgaon • Jamnagar • Kalyan-Dombivali • Kolhapur • Latur • Nagpur • Nanded • Nashik • Navi Mumbai • Navsari • Pimpri Chinchwad • Pune • Rajkot • Sangli • Satara • Solapur • Surat • Thane • Vasai • Vapi

If undelivered, please return to:

Address : ICAI Tower, Plot No. C-40, G Block, Opp. MCA Academy, Next to Standard Chartered Bank, Bandra Kurla Complex, Bandra East, Mumbai-400051.

WIRC Website : <http://www.wirc-icai.org> **ICAI Website :** <http://www.icai.org> • **Phone :** 33671400/1500 • **E-Mail :** WIRC : wirc@icai.in • **Mumbai :** wro@icai.in • **New Delhi :** icaiho@icai.org